

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

DOCKET FILE COPY ORIGINAL

In the Matter of

Market Entry and Regulation
of International Common
Carriers With Foreign
Carriers Affiliations

)
)
) RM-8355
)
)
)

RECEIVED

NOV - 1 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS OF
BRITISH TELECOMMUNICATIONS plc**

Colin R. Green
The Solicitor and Chief
Legal Advisor
Group Legal Services
British Telecommunications plc
81 Newgate Street
London EC1A 7AJ England
United Kingdom

Joan M. Griffin
Regulatory Counsel
BT North America Inc.
601 Pennsylvania Ave. NW
North Building, Suite 725
Washington, DC 20004
(301) 639-8222

November 1, 1993

No. of Copies rec'd
List ABCDE

0 54
CCB

Table of Contents

Summary.....	i
I. Introduction.....	1
II. Discussion.....	2
a. Scope of Proceeding.....	2
b. Effect of AT&T's Proposed Rules.....	9
c. BT/MCI Alliance.....	14
III. Conclusion.....	15

Summary

In its Petition, AT&T asks the Commission to initiate a rulemaking proceeding to consider en masse the Commission's rules and policies on foreign carrier participation in the U.S. telecommunications market. AT&T contends that the Commission's existing regulatory regime is inadequate to address the alleged regulatory "asymmetries" that benefit foreign-based carriers operating in the U.S. and hinder U.S.-based carriers operating in foreign countries.

In these Comments, BT addresses the appropriate scope of any rulemaking proceeding initiated to consider foreign carrier participation in the U.S. market. In considering AT&T's Petition, the Commission must recognize the reality of international telecommunications - that U.K.-based carriers face barriers to full and effective participation in the U.S. market that U.S. carriers do not face in the U.K. Furthermore, many U.S. carriers have taken advantage of the lack of foreign ownership restrictions in the U.K. to make substantial inroads in the U.K. telecommunications market. As such, in any proceeding to consider foreign carrier participation in the U.S. market, the Commission should consider the appropriateness of imposing regulatory burdens on U.K.-based carriers that are not similarly imposed on U.S. carriers operating in the U.K. In addition, the Commission should consider other issues of relevance to the provision of international telecommunications services by U.S. and foreign carriers, such as the impact of the U.S.

carriers' country direct services on the U.S. net settlements deficit. Recent evidence suggests that a substantial portion of the deficit is attributable to these services.

In these Comments, BT also considers the reasonableness and practical impact of AT&T's proposed rules. AT&T's proposal, if adopted, would effectively impose the U.S. regulatory regime on foreign countries. This is unreasonable, because the U.S. model is far from perfect. By insisting that the regulatory regimes of foreign countries mirror the U.S. regime, AT&T ignores the essential differences between nations, and would have the Commission contravene principles of international comity. Adoption of AT&T's proposed rules may prompt foreign administrations to impose onerous forms of regulation on U.S. telecommunications companies and other entities operating abroad. But most importantly, AT&T's proposed rules are anticompetitive in effect if not also intent. AT&T's criteria for "comparable market opportunities" and conditions for market entry would prevent or discourage foreign-owned carriers from entering either the U.S. domestic or international telecommunications markets or from investing in a U.S. carrier that participates in these markets. As such, AT&T's proposed rules would work to the advantage of well-funded competitors such as AT&T but to the detriment of U.S. telecommunications consumers.

Finally, BT rebuts the allegations made by AT&T in its Petition regarding the BT/MCI alliance. As previously shown, AT&T's allegations that the agreements between BT and MCI present problems of unlawful exclusivities or discrimination are without merit and deserve no further consideration.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Market Entry and Regulation)	RM-8355
of International Common)	
Carriers With Foreign)	
Carrier Affiliations)	

**COMMENTS OF
BRITISH TELECOMMUNICATIONS plc**

I. Introduction

British Telecommunications plc ("BT"), by its attorney, submits its Comments on the Petition for Rulemaking ("Petition") filed by American Telephone & Telegraph Company ("AT&T"). In its Petition, AT&T asks the Commission to establish a rulemaking proceeding to consider "the issues and policies related to foreign carrier participation in the U.S. telecommunications market, and to promulgate rules which address the current regulatory dichotomy between the United States and foreign countries."¹ AT&T contends that the Commission's existing rules do not adequately address the problem of "asymmetric regulation and market entry policies in the global services market."²

In these Comments, BT discusses the proper scope of any proceeding to be initiated by the Commission to consider

¹ Petition at 1.

² Id. at i.

foreign carrier participation in the U.S. market. If the Commission commences a rulemaking proceeding as proposed, the Commission should also consider (a) the appropriateness of U.S. policies that prevent full and fair participation by foreign carriers in the U.S. telecommunications market, (b) the extent to which U.S. carriers actively participate today in foreign telecommunications markets such as the U.K., and (c) other issues of relevance to the provision of international telecommunications services, such as the impact of country direct services on the U.S. settlements deficit. In these Comments, BT also addresses the reasonableness and practical impact of the rules that AT&T proposes. As discussed herein, AT&T's rules would stifle competition in the U.S. domestic and international telecommunications market to the detriment of the public and would significantly increase the potential for retaliatory action by foreign administrations against U.S. carriers. Finally, BT rebuts the allegations made by AT&T regarding the BT/MCI alliance.

II. Discussion

a. Scope of Proceeding

In its Petition, AT&T requests that the Commission establish a proceeding to reconsider en masse the Commission's policies on foreign carrier participation in the U.S. telecommunications market. The Petition is premised on AT&T's apparent belief that the U.S. regulatory

regime affords foreign carriers unlimited rights of entry to the U.S. market and that U.S. carriers have effectively been precluded from participation in foreign telecommunications markets.

In considering AT&T's Petition, the Commission should recognize that the reality of international telecommunications is not as portrayed by AT&T in its Petition. BT does not dispute that the U.S. telecommunications market is one of the most open in the world and that U.S. regulatory policy, for the most part, promotes competition where feasible and in the public interest. However, the fact remains that the U.S. regulatory regime imposes significant and substantial barriers to full and effective participation by foreign carriers, barriers that U.S. carriers do not face in the U.K.

Section 310(b) of the Communications Act is a prime example of such a barrier. Radio-based technologies are crucial for access to and completion of telecommunications networks, as evidenced by AT&T's proposed acquisition of McCaw Cellular. Yet Sections 310(b)(1) and (2) prohibit aliens and alien corporations from holding common carrier radio licenses, while Sections 310(b)(3) and (4) constrain the ability of foreign firms to invest in U.S. firms that hold such licenses or are the parents of such licensees. In sharp contrast, U.K. law imposes no discriminatory or nationality-based restraints on ownership, control, or

investment with respect to U.K. telecommunications licensees.³ Thus, US West and Mercury Communications Ltd. (itself 20 percent owned by North American interests) are each 50 percent owners of the new digital PCS "One-2-one" service introduced in the U.K. in September of this year.⁴

Similarly, U.K.-based firms, whether classified as dominant or nondominant under the Commission's Competitive Common Carrier policies, are subject to the Commission's application and tariff procedures in their provision of international resale services in the U.S. If a U.K.-based carrier is classified as dominant on U.S. - U.K. routes because of its foreign affiliation, it is faced with the indeterminate delays and cost penalties often associated with full regulation and the consideration of petitions to deny by the Commission. U.S. firms face no such burdens or barriers to entry in providing international resale services

³ BT submits that Section 310(b) should be repealed. The national security concerns that were the original Congressional premise for the foreign ownership restrictions can be adequately safeguarded by the Commission through the exercise of its other licensing and enforcement powers. Rather than a defense of national security, the statute's flat ban on direct foreign ownership or control of common carrier radio licenses now has the appearance and effect of a substantial trade barrier, hampering and excluding investment and competition in the U.S. telecommunications market.

In any event, the Commission should specify timescales for its determinations under Section 310(b)(4). The ability of foreign companies to enter into joint ventures, mergers, or acquisitions involving greater than 25 percent ownership interests in parent companies of common carrier radio licensees is constrained by the need for a timely ruling by the Commission under Section 310(b)(4). Investment decisions and commercial agreements are difficult, if not impossible, to reach and sustain if the timeframe for the Commission's decision is open-ended. To eliminate this critical uncertainty, the Commission should state an intention to rule on petitions for declaratory ruling under Section 310(b)(4) within three (3) months of the date of filing.

⁴ Communications Daily, September 8, 1993 at 4.

in the U.K. Under the U.K. regulatory regime, all providers of international resale services (other than international simple resale) are subject to the equivalent of "forbearance" under U.S. regulation, in that no prior approval, government notification, or tariff filing is required.⁵ All carriers operating in the U.K. are accorded this same regulatory treatment without regard to country of origin.

In the same vein, U.S. carriers have not been precluded from participation in foreign telecommunications markets, most notably the U.K. market, to the extent suggested by AT&T in its Petition. As the Office of Technology Assessment has recently recognized, the U.K. telecommunications market is "the most broadly liberalized telecommunications market in the world."⁶ Furthermore, U.K. law does not impose any regulatory restrictions on foreign investment in or establishment of telecommunications ventures licensed under the Telecommunications Act 1984 or the Wireless Telegraphy Act 1949. U.S. carriers have taken full advantage of the U.K.'s open market and enlightened regulatory regime. They hold substantial investments in

⁵ Providers of international simple resale services in the U.K. may be required to publish their prices and not to discriminate between customers, but only if prescribed market share thresholds have been reached. Even then, the application and tariff procedures to which these service providers are subject are not as burdensome as those required by the Communications Act.

⁶ U.S. Congress, Office of Technology Assessment, U.S. Telecommunications Services in European Markets, OTA-TCT-548, at 49 (U.S. Government Printing Office, August 1993).

U.K. telecommunications markets, including cable TV and local telephony, PCN, satellite, and radiopaging services. The majority of U.K. cable TV operations are dominated by North American companies -- some 55 percent of cable franchises are controlled by the Regional Bell Operating Companies. Indeed, Nynex is the U.K.'s largest cable franchisee with 17 franchises encompassing 2.5 million (10 percent of total U.K.) homes.⁷ These cable systems are free to provide - and do provide - local telephony, as well as long distance and international services. U.S. companies have also been particularly active in the U.K. mobile market - US West, Pacific Telesis, Motorola, BellSouth, and Millicom have been prominent. Penetration of the U.S. telecommunications market by U.K.-based carriers is simply not comparable because of the barriers to entry created by Section 310(b) and the like.

Thus, AT&T's Petition notwithstanding, "asymmetries" in regulation and market entry policies in the global services market have worked to the benefit of the U.S. carriers and to the detriment of the U.K. carriers. The U.S. regulatory regime burdens U.K.-based carriers with regulation and barriers to entry that U.S. carriers do not face when they compete in the U.K. Furthermore, many U.S. carriers have made substantial inroads in the U.K. telecommunications market. Any rulemaking proceeding initiated by the

⁷ Communications Daily, April 22, 1993 at 11.

Commission to consider the regulatory and market dichotomies between the U.S. and foreign countries must recognize these facts. Furthermore, if the Commission grants AT&T's Petition, then the Commission should address the appropriateness of imposing regulatory burdens on U.K.-based carriers that are not shared by U.S. carriers operating in the U.K. If the public interest requires the Commission to address "asymmetries" in regulation and market entry policies, as suggested by AT&T, then the Commission must address all such "asymmetries," not just those that allegedly work to the disadvantage of U.S.-based carriers.

The scope of any rulemaking proceeding commenced by the Commission to consider foreign carrier participation in the U.S. market should also consider other issues that are relevant to the provision of international telecommunications services by U.S. and foreign carriers. Of particular concern is the impact of USA Direct and other home direct services on the U.S. net settlements deficit. Over the past few years, the Commission has focused its efforts to reduce the level of U.S. settlements outpayments on achieving reductions in accounting rates, which the Commission contends are in excess of cost.⁸ In doing so, the Commission has overlooked the extent to which the imbalance arises from the deliberate actions of the U.S. carriers, most notably AT&T.

⁸ See Regulation of International Accounting Rates, Phase I Report and Order, 6 FCC Rcd 3552 (1991).

AT&T has been very active in promoting its USA Direct service in the U.K, which is treated for settlement purposes as if the calls originated in the U.S. BT estimates that USA Direct and similar home direct services offered by other U.S. carriers have grown from less than 20 million minutes in 1988-89 to about 60 million minutes in 1992-93. Promotion of home direct services by the U.S. carriers appears to be responsible for as much as 45 percent of the current imbalance with BT and this percentage is expected to continue to increase.⁹ Deutsche Bundespost Telekom recently estimated that U.S. country direct services are responsible for 83 percent of the settlements imbalance with Germany.¹⁰ IDB Communications Group, Inc. contends that country direct services may be responsible for more than 40 percent of the overall U.S. IMTS settlements imbalance.¹¹ Assuming the settlements deficit does not serve the public interest, as the Commission's decisions in CC Docket No. 90-337 suggest, the impact of home direct services on settlements

⁹ While the settlements in respect of home direct services account for as much as 25 percent of the overall 1992/93 settlement payments to the U.K., they are responsible for as much as 45 percent of the settlements deficit. Each home direct call not only accrues a settlement credit to U.K. carriers, but also eliminates a settlement credit that would have accrued to AT&T if a normal IMTS call would have been placed instead. Thus, the real effect of home direct on the settlements outpayment by U.S. carriers could be as high as 45 percent. The BT Direct service from the U.S. carries only about 2.5 million minutes, obviously not compensating for the 60 million home direct minutes carried by the U.S. carriers.

¹⁰ See Reply Comments of Deutsche Bundespost Telekom, NTIA Docket No. 921251-2351, filed May 29, 1993, at 2.

¹¹ See Supplemental Comments of IDB Communications Group, Inc. in CC Docket No. 90-337, Phase II, filed September 21, 1993, at 6.

outpayments is a matter that warrants consideration by the Commission.

b. Effect of AT&T's Proposed Rules

In its Petition, AT&T proposes two complicated sets of rules to address the current regulatory dichotomy between the United States and foreign countries. Before acting on any foreign carrier application, AT&T would require the Commission to make a finding that "comparable opportunities for U.S. carriers to compete in the home markets of the prospective entrants presently are available or will be available within a reasonable period not to exceed two years."¹² In making this determination, the Commission would consider, inter alia, the availability of equal access, tariffed interconnection, and network information to U.S. carriers; the existence of structural separation or non-structural safeguards between monopoly and competitive market segments; and "whether U.S. carriers are free to offer, under terms and conditions that are substantially similar to those applicable to the franchised facilities-based carriers in the foreign country, the same or substantially similar services that the foreign carrier (or its U.S. affiliate) offers or seeks to offer in the U.S."¹³ If the Commission finds that comparable opportunities exist in the home market, then the Commission would permit foreign

¹² Petition at 7 (footnote omitted).

¹³ Id. at 8.

carrier entry, but only if the foreign carrier agreed to certain conditions. The conditions AT&T would impose include proportionate return of foreign-billed traffic, availability of published and tariffed unbundled interconnection, no special concessions, and agreement not to refile U.S. originating or terminating traffic.¹⁴

BT notes at the outset that AT&T makes no attempt to justify any of the criteria it proposes for comparable market opportunities or any of the conditions it would impose on foreign carriers operating in the U.S. market. But apart from this obvious deficiency, AT&T's proposed rules, taken as a whole, raise serious issues and potential consequences that the Commission must consider before acting on AT&T's Petition.

If adopted, AT&T's rules would in effect impose the U.S. regulatory regime on foreign administrations. The unreasonableness of this approach is readily apparent. While the U.S. regulatory regime is clearly among the most liberal in the world, it is not a model beyond reproach. As previously discussed, significant barriers to market entry remain. Indeed, even the U.S. market fails to satisfy all of AT&T's criteria for comparable market opportunities. Since the U.S. regulatory regime restricts the holding of common carrier radio licenses but the U.K. regime does not, U.K.-based carriers are not free to offer the same or

¹⁴ Id. at 8-9.

substantially similar services that U.S. carriers can offer in the U.K.¹⁵

AT&T's proposal completely ignores the fundamental fact that the economic, social, political, and technological circumstances of each nation are different, if not unique, and also ignores the logical consequence of this fact, i.e., that differences in approach to telecommunications regulation and market structure are both inevitable and appropriate. "One size" of regulatory regime does not and cannot "fit all" in telecommunications. By insisting that the rest of the world become close to a mirror image of the U.S., AT&T would have the Commission contravene the most basic principles of international comity.

In reviewing AT&T's Petition, the Commission must consider the practical impact of adopting the rules AT&T has proposed. Adoption of stringent entry requirements may forestall further moves toward liberalization in other countries. The Information Technology Association of America has observed that there is a direct connection between the demonstrable success of the current U.S. regulatory policies and the liberalization that has taken place in other countries, as these countries have sought to emulate the U.S. and enjoy the benefits of competitive

¹⁵ BT also notes that in the majority of states, competition with the local exchange monopoly is prohibited; in contrast, the U.K. permits local exchange competition under class and individual licenses and imposes no foreign ownership restrictions on such competition.

telecommunications and enhanced services markets.¹⁶ The adoption of regressive U.S. telecommunications policies may prompt foreign administrations to close or refuse to open their markets. Strict entry requirements could also be cited by foreign administrations to justify imposing onerous forms of regulation on U.S. carriers operating in their markets. Moreover, foreign governments may not limit their retaliatory responses to the particular areas singled out by AT&T's proposed rules, but may instead focus their action on sectors other than telecommunications. The possible consequences of the course on which AT&T's proposals would put the Commission - and perhaps the rest of the U.S. Government - are cause for considerable caution.

But most importantly, adoption of AT&T's proposed rules would severely limit competition in the U.S. to the advantage of the established U.S. carriers, most notably AT&T, and to the decided disadvantage of U.S. telecommunications customers. AT&T proposes a very stringent test of comparable market opportunities, a test that few foreign markets would satisfy today. But even if a particular foreign market were found to offer comparable opportunities, entry into the U.S. market by carriers affiliated with that foreign market would be discouraged by the mandatory conditions AT&T would impose on such entry. Entry by a particular foreign carrier could be precluded

¹⁶ See Comments of the Information Technology Association of America, NTIA Docket No. 921251-2351, filed April 20, 1993 at 5.

altogether if the foreign regulatory regime should impose requirements on the carrier that conflict with AT&T's conditions.¹⁷

Thus, the practical effect of AT&T's proposed rules would be to preclude or discourage foreign carrier competition in the U.S. market. The impact of AT&T's proposal on competition would be wide-ranging. Under AT&T's proposed rules, a finding of comparable market opportunities would be necessary for foreign carrier entry not only to the U.S. international market but to the U.S. domestic market as well.¹⁸ In addition, AT&T's conditions for entry would apply to any U.S. affiliate of a foreign carrier, where "affiliate" is defined to include any entity in which the foreign carrier holds an ownership interest of 5 percent or more, regardless of control.¹⁹ As such, AT&T's conditions for entry would discourage not only foreign carrier entry into the U.S. market but also any significant foreign carrier investment in U.S. domestic or international carriers. U.S. carriers in need of capital to grow their businesses and become more effective competitors would be

¹⁷ Notwithstanding AT&T's assertions to the contrary, the conditions AT&T proposes for foreign carrier entry are not all within the control and discretion of the carriers themselves. See Petition at 7.

¹⁸ Petition at Attachment 1, p.1.

¹⁹ Thus, adoption of AT&T's definition of "affiliate" would overturn the Commission's findings in CC Docket No. 91-360 that there is no danger of anticompetitive behavior on the part of the foreign carrier unless the foreign carrier controls the U.S. carrier. See Regulation of International Common Carrier Services, 7 FCC Rcd 7331 (1992).

hurt by AT&T's conditions to the detriment of their well-funded competitors, in particular AT&T.

In light of these realities and likely consequences, AT&T's proposal is plainly anticompetitive in effect, if not also intent. The Commission has consistently recognized that competition facilitates the availability of high quality facilities and services at reasonable prices and thus best serves the needs of consumers. Any recognition or acknowledgment of this paramount public interest is conspicuously lacking in AT&T's proposal.

c. BT/MCI Alliance

At various points in its Petition, AT&T contends that the BT/MCI alliance presents a threat to competition in the international telecommunications market. AT&T alleges that BT and MCI have entered into "exclusive arrangements" for the provision of global services by which the parties will discriminate against other U.S. carriers and prevent those carriers from providing competitive services to U.S. customers.²⁰

BT and MCI have previously addressed AT&T's allegations in their response to the comments filed on their joint Petition for Declaratory Ruling concerning BT's acquisition of a 20 percent ownership interest in MCI.²¹ As stated

²⁰ Petition at ii-iii, 4, 33-34, 36-37.

²¹ Reply Comments of MCI and BT, filed October 12, 1993, In re MCI Communications Corp., File No. ISP-93-013.

therein, the agreements between MCI and BT do not present any problem of unlawful exclusivities or discrimination. BT and MCI do not plan to terminate their relations with other international correspondents, nor do they intend to provide services only in conjunction with one another. Rather, BT's and MCI's correspondent services will continue in the customary fashion and in compliance with applicable law and regulation.²² Furthermore, BT and MCI will not impermissibly exclude competitors from the market for regulated basic resale services. While the exact nature of the regulated resale services to be provided is not yet determined, those services will conform in all respects to the Commission's rules and policies. In light of the representations made by BT and MCI regarding their plans for the provision of service, AT&T's allegations are without merit and warrant no further consideration.

III. Conclusion

The Commission has consistently recognized that competition in the provision of domestic and international telecommunications services best serves the public interest. If the Commission decides to grant AT&T's Petition and initiate a rulemaking proceeding, then the Commission's goal in that proceeding should be to ensure that its rules and

²² Thus, BT and MCI each will continue their correspondent-based services with other companies. Neither company will unlawfully discriminate in favor of the other in accounting rates and settlements. BT will not depart from its return traffic policy and thus will maintain its practice of proportionate returns. BT and MCI will comply fully with the international settlements policies as they apply in the U.K. and the U.S. respectively.


policies governing the provision of international service by foreign- and U.S.-based carriers will in fact promote competition. As shown herein, it is far from clear whether the rules proposed by AT&T will promote, rather than stifle, telecommunications competition in the public interest. BT respectfully submits that the Commission should consider this critical ambiguity in deciding whether and, if so, how to proceed in response to AT&T's petition.

Respectfully submitted,

BRITISH TELECOMMUNICATIONS plc

Colin R. Green
The Solicitor and Chief
Legal Advisor
Group Legal Services
British Telecommunications plc
81 Newgate Street
London EC1A 7AJ England
United Kingdom

Of Counsel

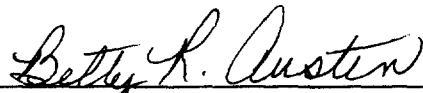
By: 
Joan M. Griffin
Regulatory Counsel
BT North America Inc.
601 Pennsylvania Ave. NW
North Building, Suite 725
Washington, DC 20004
(301) 639-8222

Its Attorney

November 1, 1993

CERTIFICATE OF SERVICE

I, Betty R. Austin, do hereby certify that on this 1st day of November, 1993, a copy of the foregoing Comments of British Telecommunications was served via U.S. first class mail, postage prepaid, to the parties listed below.


Betty R. Austin

Dated: November 1, 1993

Judith A. Maynes
Daniel Stark
Elaine R. McHale
AT&T
295 North Maple Avenue, Room 3236B2
Basking Ridge, NJ 07920